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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. 428

HARRISON PARKER,

Petitioner,

VS.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Opinion of the Court Below.

The opinion of the Supreme Court of Illinois has been reported in Volume 397 Illinois at page 305, and at pages 61 to 64 of the printed transcript.

Jurisdiction.

Petitioner, asserting that substantial federal questions are involved, invokes section 237(b) of the Judicial Act. (U.S.C.A. Title 28, sec. 344.) Respondent denies that the questions sought to be presented are substantial.

STATEMENT OF THE CASE.

Petitioner wrote and sent to the foreman of the grand jury of the criminal court of Cook County a missive accusing the management of the Chicago Tribune Company, a Chicago newspaper publishing corporation, of tax evasions of a character which petitioner deemed to be criminal under the laws of Illinois.

Illinois restricts the inquisitorial office of her grand juries to inquires submitted by public officials or initiated by the grand jurors themselves. It treats and punishes as contempt of court voluntary communications with grand jurors, such as those of petitioner, precisely as it treats and punishes unauthorized communications with petit jurors. (*People* v. *Parker*, 374 Ill. 524; *People* v. *Doss*, 382 Ill. 307.)

Accordingly, petitioner, who admits the fact of the communication and the contents thereof, was held in and punished for contempt of the criminal court of Cook County by the judgment of that court (R. 52-54).

Petitioner sought to justify the communication by asserting a claim of constitutional right to make it; by maintaining that he was the Chancellor of "The Puritan Church" and that the communication constituted an exercise of religious freedom; and by maintaining (R. 87) that certain members of the Tribune's *personnel* had been guilty of moral delinquencies in their private lives in no way related to the charge of tax evasion which petitioner sought to present to the grand jury by his informal communications with that body.

The Question Presented.

The sole question presented is:

May Illinois constitutionally interdict voluntary and unauthorized importunities to a grand jury to indict for alleged crimes and enforce such interdiction by proceedings and punishment for contempt of court?

ARGUMENT.

I.

A state may abolish grand juries entirely and therefore may restrict their inquisitorial and accusatorial offices. It may enforce such restriction by contempt proceedings. There has never been any common law or federal constitutional right on the part of citizens to communicate directly with grand jurors. Therefore, no constitutional right of petitioner is involved.

Petitioner misconceives the federal constitutional doctrine with respect to the matter of State grand juries.

A state may, without denying due process of law either to accused persons or those who desire to complain of alleged crimes, abolish grand juries altogether. (*Hurtado* v. *California*, 110 U. S; *Lem Woon* v. *Oregon*, 229 U. S. 586.) The Illinois Constitution of 1870, Article II, Section 8, authorizes the abolition of the grand jury by law in all cases.* *A fortiori*, then, a state, if it retains the grand jury at all and does not dispense with it, may require that causes be submitted to that body only by a judge, a prosecuting or other official or the grand jurors themselves, acting without deliberate communication and advice from citizens who are not members of the grand jury.

It is, of course, of no consequence that such a policy might not comport with the federal constitutional, statutory or judicial policy with respect to federal grand juries. The Fifth Amendment, which provides for grand juries, does not apply to the States.

* § 8. "No person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia, when in actual service in time of war or public danger: *Provided*, that the grand jury may be abolished by law in all cases."

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Illinois, weighing the obvious advantages of permitting citizens to make direct complaint to the grand jury of alleged violations of Illinois laws against the dangers of irresponsible communications on the part of vindictive citizens without previous investigation by public officials, has restricted what might otherwise be the privilege (it is in no sense either a state or federal constitutional right) of a citizen to accuse his fellow citizen by direct, voluntary and unauthorized communication with a member or members of a duly constituted grand jury. Such a state policy of insulation of grand juries' deliberations infringes no constitutional right of petitioner.

But, as a matter of fact, there was no common law privilege to communicate with the grand jury other than through the mediacy of its official proceedings. Attempts to influence grand jurors, like attempts to influence petit jurors,* constituted the common law crime of embracery. (*Com. ex rel Jack* v. *Crans,* 2 Clark (Pa.) 172; *Wiseman* v. *Com.,* 143 Va. 631; *U.S.* v. *Kilpatrick,* (D.C.) 16 F. 765; 112 A.L.R. 319.)

Further, it is a misdemeanor under the Federal Criminal Code to attempt to influence a grand jury of any court of the United States by communicating with them pertaining to their duties (U.S.C.A. Title 18, Sec. 243). (See *Duke* v. *U.S.* (C.C.A.) 90 F.(2) 317; 112 A.L.R. 317; *Duke* v. *U.S.,* 301 U.S. 492.)

Mr. Justice Field's celebrated charge to a federal grand jury, 30 Fed. cases 992, is frequently quoted. We quote it, together with a further quotation from Wharton's Criminal Procedure, tenth edition, section 1295, reciting further language of Mr. Justice Field on the point.*

* "You will not allow private prosecutors to introduce themselves into your presence and present accusations. Generally such parties are actuated by a private enmity and seek merely the gratification of their per-

Nothing need be said in response to petitioner's contention that, even though he might not otherwise have a right to communication with the grand jury, the fact that he was a member and directive head of a religious sect in whose name he chose to act conferred that right upon him.

Nor need much be said in reply to petitioner's invocation of "the right to petition for the redress of grievances." That right, though ancient and sacred within its proper scope, implies no privilege to tamper with a jury, grand or petit. Certainly no citizen has a federal constitutional right to attempt to influence a petit juror. Whatever may have been the common law right of access to grand jurors, no federal question whether of "right to petition for the redress of grievances" or otherwise is raised by a

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sonal malice. If they possess any information justifying the accusation of the person against whom they complain they should impart it to the district attorney who will seldom fail to act in a proper case, but if the district attorney should refuse to act they can make their complaint to a committing magistrate before whom the matter can be investigated and if sufficient evidence be produced of the commission of the public offense by the accused, he can be held to bail to answer to the action of the grand jury." (30 Fed. cases 992.)

"There has hardly been a session of the grand jury of this court for years at which instances have not occurred of personal solicitation to some of its members to obtain or prevent the presentment or indictment of parties. And communications to that end have frequently been addressed to the grand jury filled with malignant and scandalous imputations upon the conduct and acts of those against whom the writers entertain hostility, and against the conduct and acts of former and present officers of this court and of previous grand juries of this district. All such communications were calculated to prevent and obstruct the due administration of justice, and to bring the proceedings of the grand jury into contempt. 'Let any reflecting man,' says a distinguished judge, 'be he layman or lawyer, consider of the consequences which would follow, if every individual could, at his pleasure, throw his malice or his prejudice into the grand jury room, and he will, of necessity, conclude that the rule of law which forbids all communication with grand juries, engaged in criminal investigations, except through the public instructions of courts and the testimony of sworn witnesses, is a rule of safety to the community. What value could be attached to the doings of a tribunal so to be approached and influenced? How long would a body, so exposed to be misled and abused, be recognized by freemen as among the chosen ministers of liberty and security? The recognition of such a mode of reaching grand juries would introduce a flood of evils, disastrous to the purity of the administration of justice, and subversive of all public confidence in the action of these bodies." (Wharton's Criminal Procedure, tenth edition, sec. 1295.)

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state's policy in restricting the function of its grand jurors and immunizing them, like petit jurors, from importunities or other communications intended to influence their deliberations and action.

Conclusion.

For the reasons urged in this brief, Illinois respectfully submits that the instant petition for *certiorari* should be denied.

Respectfully submitted,

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